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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/921,199

08/01/2001

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80398.P455

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7590

07/10/2007

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EXAMINER

CASLER, TRACI

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

07/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/921,199
Filing Date: August 01, 2001
Appellant(s): HOFRICHTER ET AL.

MAILED

JUL 10 2007

GROUP 3600

Sheryl Sue Holloway;
Blakely, Sokoloff, Taylor & Zafman LLP
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 10, 2006 appealing from the Final
Office action mailed April 5, 2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

686403

Wiser

3-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,2,4,7-12, 14-21,24-28, 30-31, 33, 36-40 and 43-50 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,86,403 Wiser et al Secure Online Music Distribution.

3. As to claims 1, 9, 19, 30, 38 and 48-49 Wiser teaches requesting a digital file to download over a server, transmitting file identification to content manager and paying for selection(C. 6 I. 65-67 and C. 7 I. 1-5)

4. Wiser further teaches a request for the distribution tool from a client receiving it and applying the tool (C. 8 I. 46-48; 65-67 & C. 9 I. 1-3; 35-30).

5. As to claims 2, 10, 20, 31 and 39 Wiser teaches encrypted files (C. 7 I. 28-29).

6. As to claims 3, 29 and 32 Wiser teaches sending request for the appropriate provider for purchase of identified file(C. 22 I. 3-45).

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7. As to claims 4, 11-12, 21, 33 and 40 Wiser teaches a distribution tool embedded to identify provider(C. 6 I. 65).
8. As to claims 7, 15, 25, 36 and 44 Wiser teaches transmitting distribution tool as a watermark with data(C.7 I. 6-7)
9. As to claims 8, 16, 26, 37 and 45 Wiser teaches making a payment and receiving the decryption(C. 8 I. 46-49).
10. As to claims 14, 24 and 43 Wiser teaches storing distribution tool associated with purchaser(C. 8 I. 46-48).
11. As to claims 17-18, 27-28 and 46-47 Wiser teaches authoring fees and reporting rights of payments.(C. 9 I. 47-50).
12. As to claim 50 Wiser teaches a transaction ID that identifies the files and payment of a media file(C. 8 I. 1-2).

(10) Response to Argument

As to applicants arguments regarding representative claim 1 the appellant argues that Wiser does not teach the "distribution tool" as claimed by the appellant as well as Wiser fails to teach the purchaser being able to distribute the content to another persons player.

The office will address the issue of the client further "distributing" the content to another persons player. As previously stated in the "response to arguments" dated April 05, 2006, the appellant is not claiming the "client/content provider" actually distributing the data. The appellant sets forth no limitations as to how the content is distributed or that it is actually distributed to another persons player or even further distributed. The

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examiner notes that given a reasonable broad interpretation of "content provider" the client could simply play the music on their own player and allow another person to listen to it. In a broad sense, the limitation of claim 1 that appellant is arguing, "applying said distribution tool to said data **to identify said client as a content provider for said data**" the identification of the client **as a content provider** is merely how the appellant intends to use the distribution tool but never claims the use of the tool to further distribute the data. Furthermore, the "distribution tool" could be interpreted as the tool the client used to download the content to their player, in which the client is now "providing the content to the clients player."

As to appellants arguments Wiser fails to disclose the "distribution tool" as claimed by appellant. The examiner notes appellant fails to distinguish a specific type of "distribution tool", the examiner had to refer to the specification to clarify appellants teaching of the claimed "distribution tool". The appellant discloses teachings of a "distribution tool" in several different sections as different things. For example, Pg. 6 ¶ 24, Appellant states a distribution tool can be a distribution key from a server, in ¶ 25 appellant states the "distribution tool is embedded in the encrypted data as a watermark, for example a digital watermark". The appellant further discloses (Pg. 7 ¶ 25 con't.) that the watermark contains identification information about both the client and the server which allows the client to retrieve the encrypted data. In several other sections of the disclosure the appellant disclosed the distribution tool is used to "identify" either client, content provider or server or all of the above. The appellant argues that the examiner is equating a "single" element with three dissimilar prior art

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elements. However, as the examiner has just shown the appellant disclosed the "distribution tool" ie, the "single element" as at least 2 separate elements in the disclosure with out limiting the claim language to either of these two elements. In order to show the appellant the extent of the prior art to assist the appellant in additional amendments and/or responses, the examiner directs the appellants attention to the fact that Wiser teaches "digital signature" (C. 6 I. 65-67 & C. 7 I. 6-8; 18-20). Wiser further teaches the embodiment of a media key (ie distribution key) that identifies both the content manager and the purchaser. The appellant is further directed to C. 8 I. 64-67-C. 9 I. 1-2; Fig 4 Ref 410 in which Wiser teaches a "consumer" (purchaser) certificate that includes a digital signature of certificate authority. Each "passport" contains the consumer certificate.


Therefore, the examiner believes it is evident that Wiser anticipates the "distribution too" as claimed by the appellant in representative claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

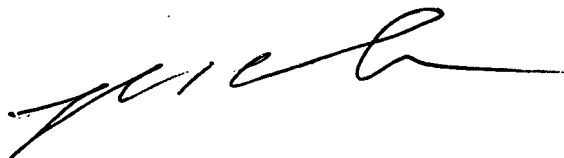
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

✓ Traci L. Casler


Conferees:

John Weiss



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Dean Nguyen

A handwritten signature in black ink, appearing to read 'Dean Nguyen', with a long horizontal flourish extending to the right.